

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	--

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Ohio on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 2:09-cv-668	DATE FILED 7/30/2009	U.S. DISTRICT COURT Southern District of Ohio
PLAINTIFF Aircraft Technical Publishers		DEFENDANT James Thomas Andrew ThomasData File, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,778,381	7/7/1998	Aircraft Technical Publishers
2 5,987,474	11/16/1999	Aircraft Technical Publishers
3 6,292,806 B1	9/18/2001	Aircraft Technical Publishers
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

without license or authority from Plaintiff, certain products or technologies that infringe the ATP Patents, including but not limited to the "IApproach" product.

31. ATP is informed and believes, and on that basis alleges, that by reason of the above acts, Defendants have caused, are causing, and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury to, among other things, the value of the ATP Patents, the goodwill and business reputation of Plaintiff, and its business relations with customers and prospective customers, all of which cannot be adequately measured or compensated in money damages. Plaintiff has no adequate remedy at law and is entitled to injunctive relief enjoining and restraining Defendants, their agents, servants, employees, partners, licensees, affiliates, and attorneys, and those persons in active concert or participation with them, including but not limited to Defendants' distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any infringing product.

32. As a direct and proximate result of Defendants' infringement of the ATP Patents, Plaintiff has been, and continues to be, severely damaged in an amount yet to be determined, but to be proven at trial.

33. This is an exceptional case pursuant to 35 U.S.C. § 285, such that Defendants are liable to Plaintiff for its attorneys' fees and costs in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. On the First and Second Claims For Relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for preliminary and permanent injunctive relief enjoining Defendants, their officers, agents, servants, employees, partners, licensees, affiliates, and attorneys, and those persons in active concert or participation with them, including but not limited to Defendants'

distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any infringing products;

2. On all Claims for Relief, for compensatory damages in an amount to be proven at trial;

3. On the First and Third Claims for Relief, for exemplary damages in an amount sufficient to deter such willful conduct by Defendants in the future

4. For pre-judgment interest at the rate as allowed by law;

5. For Plaintiff's attorneys' fees and costs as allowed by law; and,

6. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: July 29, 2009

/s/ Jerry A. Eichenberger
EICHENBERGER & BUCKLEY, LPA
Jerry A. Eichenberger (Ohio State Bar 0010855)
Michael E. Buckley (Ohio State Bar 0069727)
A Legal Professional Association
6099 Frantz Rd.
Dublin, Ohio 43017
Telephone: (614) 798-1600
Facsimile: (614) 798-1620
jeichenberger@ehlawyers.com
Attorneys for AIRCRAFT TECHNICAL
PUBLISHERS

Jack Russo (California SBN 96068)
Russo & Hale LLP
William C. Milks, III (California SBN 114083)
Hall Estill
401 Florence St.
Palo Alto, CA 94301
Tel.: (650) 327-9800
Fax: (650)-327-3737
JRusso@computerlaw.com
Attorneys for AIRCRAFT TECHNICAL
PUBLISHERS

PLAINTIFF'S DEMAND FOR JURY TRIAL

Pursuant to F.R.C.P. Rule 38, Plaintiff hereby demands trial by jury of all issues triable by jury.

Dated: July 29, 2009

/s/ Jerry A. Eichenberger
EICHENBERGER & BUCKLEY, LPA
Jerry A. Eichenberger (Ohio State Bar 0010855)
Michael E. Buckley (Ohio State Bar 0069727)
A Legal Professional Association
6099 Frantz Rd.
Dublin, Ohio 43017
Telephone: (614) 798-1600
Facsimile: (614) 798-1620
jeichenberger@ehlawyers.com
mbuckley@ehlawyers.com
Attorneys for AIRCRAFT TECHNICAL
PUBLISHERS

Jack Russo (California SBN 96068)
Russo & Hale LLP
William C. Milks, III (California SBN 114083)
Hall Estill
401 Florence St.
Palo Alto, CA 94301
Tel.: (650) 327-9800
Fax: (650)-327-3737
JRusso@computerlaw.com
Attorneys for AIRCRAFT TECHNICAL
PUBLISHERS

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2009, the foregoing Complaint was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jerry A. Eichenberger
Michael E. Buckley
EICHENBERGER & BUCKLEY, LPA
A Legal Professional Association
6099 Frantz Rd.
Dublin, Ohio 43017
jeichenberger@ehlawyers.com
mbuckley@ehlawyers.com
Attorneys for AIRCRAFT TECHNICAL PUBLISHERS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
(EASTERN DIVISION)

AIRCRAFT TECHNICAL PUBLISHERS,
a California corporation,

Plaintiff,

v.

JAMES THOMAS and ANDREW
THOMAS, individuals, and DATA FILE,
INC., an Ohio corporation,

Defendants.

) PLAINTIFF AIRCRAFT TECHNICAL
) PUBLISHERS' COMPLAINT FOR
) PATENT INFRINGEMENT AND
) TRADEMARK INFRINGEMENT
) AGAINST DEFENDANTS JAMES
) THOMAS, ANDREW THOMAS, AND
) DATA FILE, INC.
)
)
)
)
)

Plaintiff AIRCRAFT TECHNICAL PUBLISHERS (hereinafter "ATP" or "Plaintiff")

alleges as follows:

NATURE OF THE ACTION

1. This is an action for: (a) patent infringement and willful patent infringement arising out of U.S. Letters Patent No. 5,778,381¹ issued to ATP on July 7, 1998 (hereinafter the "'381 Patent"); U.S. Letters Patent No. 5,987,474² issued to ATP on November 16, 1999 (hereinafter the "'474 Patent"); U.S. Letters Patent No. 6,292,806³ issued to ATP on September 18, 2001 (hereinafter the "'806 Patent") (the '381 Patent', '474 Patent', and '806 Patent' hereinafter collectively referred to as the "ATP Patents"); and (b) the direct and individual liability of James

¹ A true and correct copy of Patent No. 5,778, 381 is attached hereto as Exhibit 1. A true and correct copy of the Notice of Intent to Issue Ex Parte Reexamination Certificate confirming the patentability of the reexamined claims in the '381 Patent' is attached hereto as Exhibit 2.

² A true and correct copy of Patent No. 5,987,474 is attached hereto as Exhibit 3. A true and correct copy of the Notice of Intent to Issue Ex Parte Reexamination Certificate confirming the patentability of the reexamined claims in the '474 Patent' is attached hereto as Exhibit 4, hereto.

³ A true and correct copy of Patent No. 6,292,806 is attached hereto as Exhibit 5. A true and correct copy of the Notice of Intent to Issue Ex Parte Reexamination Certificate confirming the patentability of the reexamined claims in the '806 Patent' is attached hereto as Exhibit 6.

Thomas, Andrew Thomas and Data File, Inc. ("Data File") (collectively "the Thomas Entities") for such patent infringement and willful patent infringement as the alter egos of Tdata, Inc. ("Tdata"), James Thomas and Andrew Thomas being the plaintiff and counter-defendant in related cases numbered C2-03-0264 and C2-04-1072 (the "Related Cases"), pending before this Court. This action is brought to remedy the proximate damaged incurred by ATP as a result of the Thomas Entities' absolute domination and control over Tdata's actions, leading to Tdata's infringement and willful infringement of the ATP patents. As a result of irresponsible corporate management, the Thomas Entities have made Tdata effectively insolvent and unable to respond to damages for lost profits believed to be in excess of \$10 million for patent and trademark infringement liability in the Related Cases. The bad faith, willful, and irresponsible conduct by the Defendants as they dominated Tdata's decisions and actions renders them individually and directly liable for the wrongful acts of Tdata and thereby liable for any damages awarded against Tdata. This action seeks preliminary and permanent injunctive relief, compensatory and exemplary damages, attorneys' fees, and costs.

THE PARTIES

2. Plaintiff ATP is a California corporation with its principal offices in Brisbane, California. ATP develops and markets computer-based systems and publishes data used in managing the maintenance and repair of aircraft. ATP is the owner of all right, title, and interest in the ATP Patents, which are each entitled "COMPUTER AIDED MAINTENANCE AND REPAIR INFORMATION SYSTEM FOR EQUIPMENT SUBJECT TO REGULATORY COMPLIANCE," as well as in the ATP Trademarks.

3. Defendant James Thomas is a resident of the state of Ohio and is the acting Chief Executive Officer of Tdata, purportedly an Ohio corporation with its principal offices at 60 Grace Drive, Powell, Ohio, 43605.

4. Defendant Andrew Thomas is a resident of the state of Ohio and is the Chief Financial Officer and Vice President of Tdata, a purported corporation registered under Ohio law with its principal offices at 60 Grace Drive, Powell, Ohio, 43605.

5. Defendant Data File, on information and belief, is or purports to be an Ohio corporation with its principal offices also at 60 Grace Drive, Powell, Ohio, 43605. The Chief Executive Officer of Data File is Andrew Thomas, and the Vice President is James Thomas.

6. Plaintiff is informed and believes and on that basis alleges that the Thomas Entities are the alter egos of Tdata through their absolute domination and control over Tdata, their utilization of this domination to use Tdata to commit patent infringement, willful patent infringement and trademark infringement against ATP, and the subsequent damage to ATP of millions of dollars in lost profits. The Thomas Entities have failed to treat Tdata as a true and legitimate corporation and instead have exploited Tdata as a fluid asset between themselves personally and Data File.

JURISDICTION AND VENUE

7. This action arises under the patent and trademark laws of the United States, 35 U.S.C. §§ 101 et seq. and 15 U.S.C. §§ 1051 et seq. Federal subject matter jurisdiction of this action exists pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), as well as 15 U.S.C. § 1121. This Court further has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as there is complete diversity in citizenship between the parties involved and the amount in controversy exceeds \$75,000. ATP is a corporation duly organized in California and James and Andrew Thomas are individuals residing in Ohio and Data File is a corporation duly organized in Ohio. The damages suffered by ATP due to lost profits are estimated in excess of \$10 million dollars.

BACKGROUND FACTS

8. As the sole founder and shareholder of Tdata, as well as its CEO and a member of its board of directors, James Thomas, along with his brother, exercises complete dominion and control over the company's direction, program development and product pricing. In addition to serving as an executive of Tdata, James Thomas is also the VP of Data File, owns 50% of Data File stock, and serves on its board of directors as well.

9. Andrew Thomas is the CFO and VP of Tdata, also serves on Tdata's board of directors, and is responsible for performing accounting duties. Additionally, Andrew Thomas is the CEO of Data File and owns the other 50% of Data File stock and serves on its board of directors.

10. Tdata and Data File are located at the same address, 60 Grace Drive, Powell, Ohio, 43605 (hereinafter "the Grace property"), and share the same open office space, including, but not limited to, a common kitchen area. There are no separate suite numbers or any partitioning whatsoever of the Grace property into two separate work spaces for the purported two, separate companies of Tdata and Data File. The receptionist that answers the phone for Tdata also answers the phone for Data File.

11. Tdata and Data File lease office space at the Grace property from an entity called Prospect Holdings Company. The co-partners of Prospect Holdings, and thus the co-owners of the office space in which Tdata and Data File are located, are James and Andrew Thomas. At the Grace property, which the Thomas brothers jointly own through their holding entity, James Thomas and Andrew Thomas each only have one office in which to perform their duties as executives of both Tdata and Data File.

12. Plaintiff ATP is informed and believes, and on that basis alleges that the sole

members on Tdata's board of directors consist of just three members: James Thomas, Andrew Thomas, and James Thomas' wife, Jodi Thomas. Jodi Thomas acts in secretarial functions and receives a salary from Tdata. Andrew Thomas' wife, at times, has also been paid to perform short-term, contract work.

13. Plaintiff ATP is informed and believes, and on that basis alleges that Tdata and Data File co-mingle assets as well as resources. Tdata often utilizes the services of Data File for activities such as packaging, shipping, as well as for borrowing employees from Data File, on an average of two (2) employees per month. Data File owns equipment that Tdata uses and has a maintenance contract on equipment that Tdata owns and uses in the production of CD's for "IApproach", Tdata's product which infringes on the ATP patents. Tdata and Data File share consolidated monthly statements for telephone bills, office supply orders, and freight bills from Federal Express. Both companies are covered under a shared group health plan.

14. Plaintiff ATP is informed and believes, and on that basis alleges that Defendant James Thomas, as CEO of Tdata and alleged sole inventor of IApproach, and together with the assistance of his brother, Andrew, dominates and controls the actions and assets of Tdata. James Thomas directs product development efforts, dictating instructions to Tdata product developers and programmers and claims to be the sole inventor of Tdata's infringing product, IApproach. There is no formal method for price setting of Tdata products; instead, Defendant James Thomas has full control and power over price determination and setting.

15. Defendant Andrew Thomas is responsible for both Tdata and Data File accounting, personally entering data in Quickbooks and writing checks on behalf of both companies. In addition, Andrew Thomas conducts the monthly invoice adjustments to appropriately allocate the consolidated monthly statements for the phone, office supply, and freight bills, as well as the invoices incurred when Tdata borrows Data File employees. He is

solely responsible for creating the various invoices and writing out the checks for monies owned by Tdata to Data File.

16. Plaintiff ATP is informed and believes, and on that basis alleges, that James and Andrew Thomas have failed to treat Tdata as a real corporation and have disregarded appropriate corporate formalities such as holding proper shareholder and director meetings and documenting such meetings with proper minutes.

17. James and Andrew Thomas receive salaries from both Tdata and Data File for their respective executive positions, and in fact take exorbitant salaries that have left Tdata nearly judgment proof by removing any profitability from the company.

18. Prior to commencement of the Related Cases, ATP gave Tdata and the Thomas Entities actual notice of the patent infringement and willful patent infringement being practiced by Tdata. ATP is informed and believes, and on that basis alleges, that the Thomas Entities disregarded all notices regarding the ATP Patents, and that Tdata has continued willfully to use, manufacture, sell, or offer to sell products that infringe the ATP Patents, or to contribute to and/or induce others to infringe the ATP Patents.

19. ATP is informed and believes, and on that basis alleges, that the Thomas Entities have, as the alter egos of Tdata, willfully, directly, and contributorily infringed the ATP Patents and have induced others to infringe said Patents through Tdata's manufacturing, use, advertising, sales, and marketing efforts.

20. ATP is informed and believes, and on that basis alleges, that the Thomas Entities, as the alter egos of Tdata, have willfully, directly, and contributorily infringed the ATP Trademarks through Tdata's use of ATP marks as metatags on one or more Tdata websites, by using the ATP Trademarks without proper trademark registration designation, and by continuing to use said marks on one or more of its websites without any notification that such ATP

Trademarks are owned by ATP, thus creating confusion regarding ownership of said marks and good will associated with such marks.

FIRST CLAIM FOR RELIEF
(Willful Patent Infringement)

21. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20, above, as if set forth in full herein.

22. Plaintiff ATP's '381 Patent was duly and legally issued on July 7, 1998. Plaintiff ATP's '474 Patent was duly and legally issued on November 16, 1999. Plaintiff ATP's '806 Patent was duly and legally issued on September 18, 2001. Plaintiff is the owner of all right, title and interest in the ATP Patents, together with all rights to sue and recover damages for all accrued and other patent infringements, whether past, present, or future.

23. ATP is informed and believes, and on that basis alleges, that the Thomas Entities, as the alter egos of Tdata, are now infringing, contributorily infringing, or actively inducing infringement by others of at least one claim of the ATP Patents by making, using, offering to sell, importing into, or selling within this District and elsewhere in the United States, without license or authority from Plaintiff, certain products or technologies that infringe the ATP Patents, including but not limited to the "IApproach" product.

24. ATP is informed and believes, and on that basis alleges, that by reason of the above acts, the Thomas Entities have caused, are causing, and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury to, among other things, the value of the ATP Patents, the goodwill and business reputation of Plaintiff, and its business relations with customers and prospective customers, all of which cannot be adequately measured or compensated in money damages. Plaintiff has no adequate remedy at law and is entitled to injunctive relief enjoining and restraining Defendants, their agents, servants, employees,

partners, licensees, affiliates, and attorneys, and those persons in active concert or participation with them, including but not limited to Defendants' distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any infringing product.

25. As a direct and proximate result of the acts of the Thomas Entities, Plaintiff has been, and continues to be, severely damaged in an amount yet to be determined, but to be proven at trial.

26. ATP is informed and believes, and on that basis alleges, that Defendants' acts of patent infringement as set forth herein are and continue to be willful, malicious, wanton, and intentional, and Plaintiff is entitled to its damages to be trebled pursuant to 35 U.S.C. § 284.

27. This is an exceptional case pursuant to 35 U.S.C. § 285, such that Defendants are liable to Plaintiff for Plaintiff's attorneys' fees and costs in prosecuting this action.

SECOND CLAIM FOR RELIEF
(Patent Infringement)

28. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 20, above, as if set forth in full herein.

29. Plaintiff ATP's '381 Patent was duly and legally issued on July 7, 1998. Plaintiff ATP's '474 Patent was duly and legally issued on November 16, 1999. Plaintiff ATP's '806 Patent was duly and legally issued on September 18, 2001. Plaintiff is the owner of all right, title, and interest in the ATP Patents, together with all rights to sue and recover damages for all accrued and other patent infringements, whether past, present, or future.

30. ATP is informed and believes, and on that basis alleges, that the Thomas Entities, as the alter egos of Tdata, are now infringing, contributorily infringing, or actively inducing infringement by others of at least one claim of each of the ATP Patents by making, using, offering to sell, importing into, or selling within this District and elsewhere in the United States,